

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c). (This is a GIL).

June 21, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 14, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

We are writing on behalf of one of our clients, a home health care company (the company), regarding the Illinois sales and use tax implications associated with selling specific medical equipment, appliances and supplies.

Company Background

The company is in the business of selling and renting durable medical equipment and related supplies to patients for use primarily in their homes. Payment for products sold and rented is received from Medicare, Medicaid, private insurance companies and patients.

Sales and rentals are generally made only pursuant to a prescription issued by the patient's physician. Sales and rentals billed to Medicare or Medicaid require a physician's prescription to qualify for reimbursement.

Products Requiring Clarification

1. Incontinent diapers, incontinence pads (liners) and undergarments

The company sells incontinent diapers, liners and undergarments to patients pursuant to a prescription. Pursuant to ST 98-0279-GIL and ST 95-0257-GIL it is clear that adult incontinent diapers and undergarments are subject to the low rate of tax. We respectfully request confirmation that sales of incontinent diapers, and undergarments prescribed and sold to disabled or ill children are also taxed at the low rate of tax. The items in question are sold pursuant to a prescription and are sold to patients who are beyond the normal age children cease needing

diapers and whose incontinence is due to illness or disease. The company does not sell diapers intended for use by babies or toddlers.

2. Ostomy supplies (deodorant, lubricants, adhesive remover and skin preparation solutions)

The company sells ostomy supplies such as specialized deodorants, lubricants, barrier cremes, adhesive solutions, adhesive removers and skin preparation solutions and wipes intended for use by patients who have undergone ostomies as a means to expel waste. The supplies are sold pursuant to a doctor's prescription and are integral to a patient's health and well being. Routine care and maintenance of the ostomy site require the use of the skin preparation wipes and preparations. Many patients also require lubricants and barrier cremes to change their catheters, pouches and flanges. The adhesives and adhesive removers are used to affix and minimize unwanted movement of the ostomy barriers and flanges.

The ostomy bags, tubes, catheters are taxed at the low rate of tax since they directly substitute for a malfunctioning part of the body. The ostomy supplies described above are integral to medical appliances and supplies taxed at the low rate and are required to properly care for and maintain the ostomy site. We respectfully request clarification as to whether the ostomy supplies described above are taxed at the low rate of tax.

3. Urological Irrigation Trays with Syringes

The company sells urological irrigation trays with syringes for patients who have a surgically created opening by which waste is expelled from the body. The trays include a syringe, sodium chloride solution, alcohol preparation pads, drapes and a drainage tray. The tray and supplies are used to irrigate and clean the surgically created opening used to expel waste.

Are the urological trays with syringes subject to tax at the low rate or the high rate of tax?

4. Air Filters and Purifiers

The company sells and rents air filters and purifiers to patients who have respiratory illnesses or diseases. The filters and purifiers are used primarily in conjunction with other respiratory equipment such as ventilators, oxygen equipment, CPAPS or nebulizers.

Are the air filters and purifiers subject to tax at the low rate or high rate of tax?

Conclusion

We respectfully request written guidance as to whether the above mentioned products are subject to Illinois sales tax at the high rate of tax or the low rate.

If you have any questions or need any additional information, please call me.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided.

Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities.

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

In general, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. Some of the products specifically listed in the regulation as qualifying for the reduced rate are home glucose monitors, home blood glucose test strips and related supplies used to treat human diabetes. Other products that directly substitute for a malfunctioning part of the body include urological catheters, leg bags, ostomy pouches and drain bags, and mastectomy prosthetic devices such as forms and bras.

Please note that supplies, such as non-sterile cotton swabs, disposable baby diapers, toilet paper, tissues and towelettes and cosmetics do not qualify for the reduced rate. However, sterile dressings, bandages and gauze do qualify for the reduced rate.

Diapers for incontinent adults, as well as undergarments and incontinence pads for incontinent adults qualify for the low rate of tax. See Section 130.310(c)(3). Incontinent diapers and undergarments sold pursuant to prescription to disabled or ill children that are older than the normal age children cease needing diapers and whose incontinence is due to illness or disease qualify for the low rate of tax.

Ostomy supplies such as deodorant, lubricants, adhesive remover and skin preparation solutions do not qualify for the low rate of tax as they do not substitute for a malfunctioning part of the body.

Urological irrigation trays with syringes that are used to irrigate and clean the surgically created opening used to expel waste are supplies and are therefore subject to the high rate of tax.

The air filters and purifiers described in your letter are subject to the high rate of tax as they are not medical appliances.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.